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Ritual Presence and Legal Persons. Deities and the Law in India

Daniela Berti

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Judges in India are sometimes called upon to decide on issues that involve the status of a specific deity–image, which in juridical language is called an ‘idol’.¹ Though some of these cases are brought before the court by worshippers of these deities and are presented as related to their rights, in other cases it is in the name of a deity itself—and thus of the ‘deity’s rights’—that the case is filed in court. In fact, Hindu idols are considered to be legal persons who can sue and be sued in a court of law.² This idea, which was introduced in India by the British during the colonial period, has often been presented by both judicial milieus and academic literature as legal fiction that allows a god to be granted the ownership of material property and to be the recipient of donations.³ However, the variety of questions that judges are called upon to decide in relation to these ‘idols’ goes far beyond the issue of the deity’s material property and may sometimes have a direct impact on the way the deity is worshipped by its devotees.

The idea that a case can be brought before the court in the name of a deity—as a plaintiff or as a respondent—may seem surprising. In a 2007 case that made sensational headlines,⁴ a Nebraska senator filed a complaint against God in a US district court, accusing Him of being responsible for hurricanes and other ‘calamitous catastrophes’. This move was in fact a form of provocation by the senator who, an atheist, thought he had found an effective way of protesting against the motto written on American dollars ‘in God we trust’. The case was eventually dismissed by the judge on the grounds that—perhaps not without some humour as well—God’s postal address was not indicated in the file and the notification could not therefore be sent.⁵

In India, on the other hand, since idols are juristic persons, using their name in a court case is not surprising and, as they are linked to specific places of worship, they might well be notified by the court. By contrast, the involvement of an idol in a court case is not expected to imply the idea of the deity being an ‘intentional actor’ in the case and thus, for example—as provocatively alleged by the Nebraska senator—of being responsible for sending floods. Courts of law in India are in fact secular institutions that were introduced in their present form during colonial times by the British and which follow a common law procedure.⁶ Although judges may sometimes include religious speculations in their rulings, the court is supposed to deal, in these cases, with the juridical status of a god—its properties, its revenues and its taxes—not its ontological existence.

Courts are not concerned with the question about whether the deity exists or not in a specific place but about the kind of rights (or duties) a deity–image linked to a particular place

¹ In this text I will follow G. Colas’s use of the compound name ‘deity–image’ which also includes non-anthropomorphic images of deities (Colas 2009). I will also alternatively use the word idol in this sense.

² See, for instance, *Rambrama Chatterjee* 1922.

³ Sontheimer (1964); Annoussamy (1979); Patel (2010).

⁴ See for instance Singel (2007).

⁵ *State Senator Ernie Chambers v. God* 2007.

⁶ Cf. Berti, Tarabout and Voix (2016).

enjoys. Nor are they concerned with the idea of accusing a deity, even in a provocative manner as the US senator did, of provoking flooding, although this kind of claim was brought before the king in some regions in pre-colonial and colonial times (Berti 2016). In this sense, and despite the legal definition of a legal person—‘to have rights and co-relative duties’—the idea of responsibility which is normally included in the notion of duties does not extend to events which would imply the idea of a deity’s agency, though it does apply, for example, to the idol’s ‘duty’ to pay taxes.⁷

In this regard, it is interesting to find in an Indian ruling a distinction between the deity’s ‘will’ which, as a judge wrote, ‘is a matter of psychology or metaphysics’ and which is not within the sphere of the judge, and the ‘deity’s rights’, ‘which are absolutely within the sphere and under the control of the law’.⁸ According to this reasoning, we could say for example that the idea of the deity provoking flooding concerns its ‘will’, whereas the fact that a deity has to pay taxes concerns its ‘rights’ or duties. Based on this distinction, Hindu idols are in principle no different from other legal fictions that are accredited to objects or institutions such as corporations. (Watson 2019)

However, deities in India, particularly in cases of anthropomorphised images, are commonly treated by worshippers as human-like individuals. In many temples the deity’s image (*murti*) is washed, purified, dressed, its face made up, given food and at night-time put to bed on a daily basis.



Raghunath (Rama) and other deities take their daily meal. Kullu, 1999, D. Berti



Rama and Sita are put to bed every night. Kullu 1999, D. Berti

This ritual perception of a deity as an ‘individual’ coexists and may sometimes become confused with the legal definition of the idol as a legal person. The media sometimes sensationally features this confusion, as in the headlines: ‘Priest demands citizenship for Lord Balaji’ [a form of Vishnu worshipped in South India] (TNN 2020), asking the government of India to acknowledge the deity as citizen of India; or ‘How Lord Ram became a party to the Ayodhya dispute’ (India Today Web Desk 2019) detailing the controversial case involving the alleged ‘birth-place of Ram’.

Judges may contribute to this ambiguity in some cases. Some judges are in fact clearly interested in religious or spiritual ideas and, if the case concerns a deity, sometimes seem to

⁷ As a juristic person, a god may not only be the owner of land or property rights but also have obligations such as paying taxes on their ownership. Deities were recently attributed a PAN (Permanent Assessment Number) card, a permanent identification number, and can now declare their income tax (Mitra 2018).

⁸ *Commissioner Of Income Tax* 1963, para 41.

take pleasure in including in their rulings a number of quotations that appear to be religious or philosophical speculations rather than legal thinking. In some rulings we see the judge suddenly shifting, for example, from a discourse on whether gods, as juristic persons, should pay property taxes or not, to the idea of the mysteries of the cosmos.⁹

It is true that whenever a judge includes religious ideas in his ruling, he usually refers to an abstract and spiritual level of religious thinking, not to a specific local deity. Moreover, in most of these cases, reference to religious thinking appears to be merely an intellectual exercise for the judge without it having much impact on his final decision which is based, most of the time, on legal reasoning. However, some exceptions may be found where the separation between the legal and religious appears to be blurred. One significant example in this respect is a ruling passed in 1991 by the Kerala High Court where the judge ruled in favour of continuing to ban women of menstrual age from entering the Sabarimala temple on the grounds of astrological advice. During a public astrological consultation—we read in the ruling—since the Sabarimala deity was conceived in the form of a renunciant, it would have expressed the wish to continue to live in celibacy and austerity without being disturbed by the presence of women.¹⁰ The Supreme Court eventually overruled the High Court decision although not explicitly on those grounds.¹¹ By contrast, in another case, again in Kerala, the Supreme Court explicitly recommended that the court not base its decision on astrological procedures.¹²

Apart from some exceptions, which usually prove to be quite controversial, the realm of the ‘deity’s will’ is excluded from the scope of the court.¹³ It is worth noting, for example, that although local deities in various regions of India are supposed to be able to express themselves through the voice of their temple mediums, this ritual procedure (as in the case of astrological consultations) is not authorised in court. It is in fact the temple administrator, not the deity’s medium, who is legally entitled to represent the idol in court: though a legal person, the idol is considered a ‘perpetual minor’, with the administrator as its legal parent (Patel 2010: 4).

In this paper, I first present some of the issues that judges are called upon to decide in cases where the issue of the deity’s idol comes into play. Although most of these cases raise questions regarding the idol’s properties, others may concern more religious and ritual issues. I then focus on two cases from the state of Uttarakhand in which, although the court had to rule on an environment-related issue—flooding and pollution—the question of the deity’s presence in the area also came into play. The comparison between these two cases will show how the attribution of a ‘legal personality’ to a local goddess and to the Ganga river may have different implications in terms of the practical consequences that the very notion of legal person entails.

The legal existence of deity-images

The notion of considering deity-images as legal persons was introduced in India in the nineteenth century by British officers who at the time of the land census were faced with the practical problem of how to apply and legally handle the Hindu practice of dedicating properties

⁹ *Shyamal Ranjan Mukerjee* 2007.

¹⁰ *S. Mahendran* 1991..

¹¹ *Indian Young Lawyers Association* 2018.

¹² NDTV (2011).

¹³ In some judgments we find, for example, the notion of a ‘deity’s displeasure’ which refers to the idea of following the will of the deity as is believed to be expressed by the temple medium. In one judgment, for example, the medium was accused of influencing local elections by declaring that if people voted for a certain candidate, they would have to face the deity’s displeasure. In such cases, recourse to the idea of ‘deity’s displeasure’ as a way of influencing elections is considered to be an offence by the court. (Cf. for example *Ram Sewak Yadav* 1964).

to a deity.¹⁴ The Anglo-Saxon system of common law, introduced in India in the seventeenth century, provided only two possible categories, ‘legal persons’ and ‘things’, into which deity-images could fit, although this dichotomisation was certainly not the concern of pre-British religious or legal scholars. In keeping with the principle of ‘non-interference’ in religious matters (Dirks 1997: 183; Presler 1987) and in order to legally handle the practice of donating land to deities,¹⁵ British officers registered this land in the name of the deity by considering the idol as a juristic person.

However, what does ‘to be an idol’ exactly mean? In India, even in ancient times, there was a debate about what the idea of a god being a landowner actually meant and whether the god could, for example, be an ‘owner’. Colas (2009) has shown how the popular idea that gods are ‘living persons’ capable of owning land was criticised by most Indian scholastic systems, particularly Mimamsa which argued that the notion of a deity-image as a landowner is hypothetical and has to be taken as a socio-religious convention (Colas 2009: 109). The author also shows how the donation of land to deity-images has been attested to since the fourth or fifth century in epigraphic collections: the inscriptions refer to both the spiritual aim of the donation as well as to administrative and financial negotiations (ibid.: 112).

While recognition of the legal status of these deity-images was nothing new (Patel 2010: 4), the idea of considering them as ‘legal persons’ was introduced during the colonial period. The exact consequences this idea might have in court, however, was not very clear (Patel 2010) and is often a subject of debate among judges, often replicating the religious and philosophical debate. Not only has the legal concept of the Hindu idol as a juristic entity evolved with developments in jurisprudence (Patel 2010: 49) but, since the very beginning, it appears to be interpreted in different ways according to the arguments lawyers or judges wish to make. One widespread idea reiterated in many Indian rulings concerns the figurative or ideal sense that has to be given to the notion that an idol is a juristic person capable of holding property. ‘Neither God nor any supernatural being could be a person in law’, wrote for example a Supreme Court judge in 1969, but ‘so far as the deity or idol stands as the representative and symbol of a particular purpose indicated by the donor, it can figure as a legal person.’¹⁶ Acknowledging a god as a person is therefore presented here as a way to legally concretise the intention of the donor, to make the god the beneficiary of the donation, and thus to ensure the fulfilment of the donor’s ‘pious purpose’.¹⁷

In this regard, it should be noted that, while a deity may be honoured in a ritual context through multiple modes of what Vernant (2006) called ‘presentification’ (palanquins, pots, diagrams, arches, human oracles, etc.), the court intervenes only in cases when the deity is supposed to be settled in a particular place. The way of defining ‘idol’, however, varies according to judges. More specifically, judges do not appear to be unanimous in defining the materiality of such a presence. Some of them refer to the idol as a concrete/material object,

¹⁴ See Sontheimer (1964), Annoussamy (1992), Vidal (1988), Davis (2010), Colas (2012), Patel (2010). In India, the judiciary system we observe today (with a court hierarchy) was set up by the British who introduced a code of procedure that was taken from common law, as well as a civil and a criminal code of law which are still used. India has been familiar with the Anglo-Saxon system of common law since the seventeenth century: during the three centuries prior to Independence this system was fully integrated into the workings of Indian society, and this has been the case since 1947.

¹⁵ These donations were presented as acts of devotion but also had some political implications. Kings themselves offered their kingdom to a deity and ruled on their behalf. (Sontheimer 1964; Presler 1987). In the Kullu region where I worked, for example, a transfer was made in the past to the god Raghunath, who is still today regularly honoured as king: every day he is dressed as a king, honoured, given food, and at night-time, put to bed. Land donations were also made to village deities, sometimes by the king himself in order to create political alliances at local level (Berti 2016).

¹⁶ *Yogendra Nath Naskar* 1969.

¹⁷ *Ibid.*

which would be necessary for recognising the deity as a juridical person,¹⁸ as in a ruling decided in 1897 by Calcutta High Court which refused to recognise a donation someone wished to offer to an idol that did not exist when they wrote their will.

The deity, no doubt, is always in existence, but there could be no gift to the deity as such, and there was no personification of the deity, to whom the gift could have been made or who was capable of taking it.¹⁹

However, in a ruling at about the same period the court made exactly the opposite decision in a case where an idol, which did not yet exist, was designated as beneficiary of a will. The court decided that the property could be given to the idol even before the idol had been made.²⁰ That an idol does not need to already exist in a place for it to be recognised as a legal person has been addressed by other rulings in which the court has established that the ‘juristic person in the idol is not the material image’.²¹ The point was recently discussed in a very politicised/high-profile case decided in 2019 by the Supreme Court concerning the longstanding conflict at Ayodhya, where the judges ruled that:

‘Being the physical manifestation of the pious purpose, even where the idol is submerged, not in existence temporarily or destroyed by forces of nature, the pious purpose recognized to be a legal person continues to exist.’²²

In this case the lawyer defending the deity Ram even went as far as to urge the court to recognise the land believed to be the birthplace of god Ram as a legal person. The lawyer’s argument is reported in the ruling:

The place itself—Ram Janmasthan—is an object of worship since it personifies the divine spirit worshipped in the form of Lord Ram. Both the deity and the place of birth thus possess a juridical character. Hindus worship the spirit of the divine and not its material form in the shape of an idol. This spirit which is worshipped is indestructible. Representing this spirit, Ram Janmabhumi **as a place** is worshipped as a deity and is hence a juridical person [original emphasis].²³

On a similar line, the definition of a god as a juristic person contrasts in other rulings with ‘the worshipers’ point of view’ which is presented as belonging to ‘custom’ or as a ‘local fiction’: in various cases, judges also highlight in the ruling the equally figurative sense to be given in law to the idea that a village or a piece of land ‘belongs’ to a god since a god, compared to a human owner, wrote a judge, ‘does not make use of the village or lands according to its desires’²⁴. One point of discussion for example concerns the definition of the deity–image as an ‘individual’. In a key ruling by Calcutta High Court concerning the question of whether a deity’s land property should be taxed, Justice Mukharji opposed the religious and the legal views while, at the same time, recognising ‘the peculiar status’ of Hindu idols as compared to other kinds of legal persons such as corporations or ships.

¹⁸ *Ram Jankijee Deities* 1999.

¹⁹ *Upendra Lal Boral* 1897, para 5.

²⁰ *Bhupati Nath Smrititirtha* 1909.

²¹ *Purnam Ramachandram* 2004.

²² *M Siddiq (D)* 2019, p. 162.

²³ *Ibid.*, p. 46.

²⁴ *Yogendra Nath Naskar* 1969, p. 5.

No doubt it will be a little odd to think God or a deity as an individual as ‘both physically and practically...[a Hindu deity]...cannot do many things which a human individual can do [...] At the same time, a Hindu deity is treated certainly in many respects as an individual: [quoting a previous judgment] “the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest.” So the Hindu deity is also treated as an individual in that respect if he has got by custom, convention or local fiction attributes of an individual.²⁵

Judges may disagree about whether the idol has an ‘individual interest’ or not. In fact, while we read in some judgements that a Hindu idol ‘is conceived by Hindus as a living being having its own interests apart from the interests of its worshippers’,²⁶ in other rulings the judge underlines the fact that the idol has only an ‘ideal interest’ since the ‘real material enjoyment must ultimately be with some human being.’²⁷

While the cases mentioned above point to the question of whether to confer a legal personality on an ‘absent’ idol, an idol that is no longer or not yet where it is supposed to be, other cases raise the question of what to do when two deity-images are in the same place or when one deity has several ‘copies’. In one case, for example, the judge had to decide whether two idols honoured within the same compound were to be acknowledged as if they were the same deity whose property therefore had to be managed by one committee; or whether they were two separate deities, whose property had to be shared and managed by two different committees. The case first went before Bihar High Court which ruled that since the name of one of the idols, Raja Rani, was not in the Sanskrit treatises, the Shastras, the identity of this deity was ‘fake’ and there was therefore only one deity.

The image of the deity is to be found in Shastras. “Raja-Rani” is not known to Shashtras. It is unknown in Hindu Pantheon. [...] There cannot be a dedication to any Name or image not recognized by the “Shastras”.²⁸

An appeal regarding the case was filed by ‘Ram Jankijee Deities’ (the petitioner) and the Supreme Court overturned the High Court decision saying that ‘what makes an image an “idol” is the human consecration’:

On the factual score there are temples – In one there is 'Jankijee' and in the second there is 'Raja Rani' but by no stretch of imagination, the Deity can be termed to be in fake form and this concept of introduction of fake form, it appears is a misreading of the provisions of Hindu Law Texts. What is required is human consecration and in the event of fulfilment of rituals of consecration, Divinity is presumed: there cannot be any fake deity.²⁹

The judges in this case extensively refer in their judgment to religious texts illustrating the role of consecration in the definition of an idol, as well as of the donor’s intention in relation to

²⁵ *Commissioner of Income Tax* 1963, para 32. In another judgment the judge wrote that ‘a juristic person under the English system has no body or soul. It has no rights except those which are attributed to it on behalf of some human beings.’ (*Tarit Bhusan Rai* 1941, para 11).

²⁶ *Ibid.*

²⁷ *Commissioner of Income Tax* 1963, para 129.

²⁸ *Ram Janki Ji And Ors.* 1991, para 9.

²⁹ *Ibid.*, para 21.

such an idol. ‘It is not a particular image which is a juridical person but it is a particular bent of mind which consecrate[s] the image.’³⁰

A simple piece of wood or stone may become the image or idol and divinity is attributed to the same. As noticed above, it is formless, shapeless but it is the human concept of a particular divine existence which gives it the shape, the size and the colour.³¹

In another case decided by the High Court of Allahabad (Uttar Pradesh) the judge came to a different conclusion. Again, there were two deities, each in a separate temple but one idol was a replica of the other. The replica—so we read in the judgment—had been made in Mughal times and placed in the ancient temple, whereas the original image had been taken to another place to protect it and then placed in a new temple. The question the judge had to address was: were they one deity and therefore to be managed by the same administrator? Or were they, as one of the parties claimed, two separate deities with two different administrators? After having quoted, here also, numerous passages from Sanskrit texts concerning the worship of images, the judge decided that it was a question of a single deity and that the property had to be combined, the idea being that one image was a mere ‘replica’ of the original.³²

Making a donation to a god can sometimes have unexpected repercussions, granting legal existence to something that would otherwise be legally non-existent. For example, in a criminal appeal decided by the Allahabad High Court concerning a man convicted for beating to death a roaming buffalo dedicated to a deity, it was decided that, as the bull had been dedicated to an idol, it was not *fera bestia* and therefore ‘legally non-existent’ (*res nullius*), but (quoting a 1888 precedent) it had ‘the rights and liabilities attaching to its ownership’, that is to the idol having all the proprietary right.³³

Judges may be called upon to rule on conflicts concerning places to which different religious or sectarian groups lay claim. One of these cases concerned a Jain temple in Rajasthan which was managed by Svetambara Jains but whose main idol, Adeshwarji, had allegedly been consecrated by Digambaras. This had already resulted in some tension between the two sects, and in 1949 the dispute came to light when the Svetambaras tried to transform the idol into a ‘Svetambara idol’ by applying on it *chaksus*, glass eyes: whereas for the Digambaras the idol must be naked and unadorned—it must be portrayed as a naked man in yogic contemplation, his eyes downcast, showing his renouncement of the world—Svetambaras underline the royal birth of Tirthankaras. For them, the idol must be decorated with gold and precious stones, draped in cloth, and glass (open) eyes must be applied on the marble and look at the devotee. The Digambaras protested: they accused the Svetambaras of altering the idol to suit their own convictions and they asked the judge to order that the eyes be taken out.. After having established with the help of an inspector that the idol had initially been consecrated by the Digambaras (which therefore shows the importance of the idol’s consecration compared to the idol’s ownership), the judges decided that the eyes had to be taken out and that the Digambaras had the right to honour the idol according to their own precepts from 6 am to 9 am daily without any disturbance.³⁴

In this case, while the judge legitimised the intervention of the court in a ritual matter by saying that it called into question ‘the right to worship of the Digambaras’, it is the deity’s ‘presence’ and how this presence is supposed to portray itself in the idol that was the issue for

³⁰ Ibid., para 17.

³¹ Ibid., para 20.

³² *Thakur Govind Deoji Maharaj* 1968. For an analysis of this case, see Clémentin-Ojha 2016.

³³ *Abdul Qayum* 1945, paras 3-4.

³⁴ *Ugamsingh and Mishrimal* 1970.

the parties involved. Although the court's decision in this case could clearly have an impact on the ritual way of worshipping the deity, this issue was handled by the court from a secular perspective, the question addressed being not 'in which form the idol should be worshipped', but 'which group of devotees has the right to worship the deity'.

I will now examine two cases decided by the High Court of Uttarakhand (in the Indian Himalayas) which show a contrast between discourses held on the ritual and on the legal settings, as well as the kind of twist that may occur regarding the idea of god's agency.

Dhari Devi and the cause of the flood

The case concerns the goddess Dhari Devi whose temple is situated in a region where a development company was commissioned in 2006 to build a large hydroelectric project. There were various opponents to the project, including some of the goddess's devotees who thought that the dam would provoke a rise in the water level which would submerge the temple of the goddess, herself closely associated with flooding: it is said that a local king once tried to move the idol and this was immediately followed by a landslide in the valley.³⁵



Dhari Devi³⁶

The company, which acknowledged that there was a real risk of the idol being submerged, proposed different solutions, including the idea of transferring the statue of the goddess to another place, a proposition that was met with strong opposition. The temple committee sent a letter in 2009 to the company reporting that the goddess had said through her medium that she was against moving the statue. In the letter the temple priest warned that if the goddess's wishes were not respected, the company would be responsible for the 'loss and any unnatural (*unhoni*) things' that would happen (Niraj 2013).

Activists and politicians too were opposed to moving the image. A Hindu nationalist leader threatened to commit suicide by drowning (*jal samadhi*) if the statue was moved. (ibid.). The company then proposed to build a platform just above the temple where the goddess's image would be placed to prevent it from being submerged.³⁷ The proposal was accepted, albeit not without causing some controversy. In 2011, for example, a local activist brought a case before the court arguing that raising the statue to a higher platform would hurt devotees' religious feelings. The Supreme Court later dismissed the request on the grounds that, since the 'sacred

³⁵ This case has been studied in detail by Frances A. Niebuhr (2017).

³⁶ https://upload.wikimedia.org/wikipedia/commons/thumb/5/5c/Dhari_Devi.jpg/220px-Dhari_Devi.jpg

³⁷ *Alaknanda Hydro Power* 2013.

rock' on which the temple was based was still intact, it was of the opinion that 'none of the rights of the devotees of Dhari Devi temple has been affected by raising the level of the temple'.³⁸

In June 2013, when torrential rains threatened to submerge the temple, company staff (with prior agreement from members of the temple committee) decided to hastily move the statue to another place in order to avoid it being submerged. Some hours later, according to what some media reported,³⁹ the flood started. Intensive rain caused the rupture of dammed lakes in the upper part of the valley, bringing destruction and killing several hundred people.⁴⁰

After the event, people began to wonder about the possible causal link between moving the statue and the flood, a discourse that was also reported in local media as in the article 'Superstition or co-incidence? Locals believe Kali avatar Dhari Devi unleashed the floods for revenge':

On the evening of June 16, the statue of the goddess was uprooted from its ancient temple to make way for a hydro-power project. Hours after the idol had been moved, there was a sudden cloudburst over the Kedarnath Valley which washed away the entire shrine town, killing hundreds of people.⁴¹

The event was also politically instrumentalised. A Hindu nationalist leader, for example, publicly declared that 'Dhari Devi wanted to teach the atheists ruling this country a lesson and to tell them not to touch the Himalayas and its rivers'. Numerous television broadcasts took up this discourse: a video montage presented during the national news programme showed a picture of the statue of Dhari Devi and the 'biographical data' of the goddess, which alternated with images of the floods, visually reproducing the idea that as soon as the statue had been taken from its original place, lightning flashes appeared in the sky.⁴²

The case took on a new twist in August 2013 when an association of victims brought the case before the National Green Tribunal in Delhi, holding the company responsible for the catastrophe and demanding compensation. The company was accused of having created an enormous embankment without taking the necessary safety measures, causing a landslide. However, the company refused to recognise its responsibility, saying that the flood was an 'act of god'. In law, the expression 'act of god' refers to 'an overwhelming event caused exclusively by the forces of nature, and includes all natural phenomena that are exceptional, unavoidable and irresistible, the effect of which cannot be prevented or avoided.' It does not hold people accountable.⁴³

Far from implying a divine punishment, the notion of an act of god which the company used as an argument in its own defence, means the exact opposite in law—that nobody is responsible for what happened. In other words, in contrast to the idea put forward by some people according to whom a god-induced event (the flood) had been provoked by human action (the moving of the statue), the idea of an act of god, which was used in court, implied the absence of any responsibility. It is a juridical category, sometimes defined as an 'act of nature' or an 'act of Providence'. What is interesting here is that the notion of an act of god used by the company to disclaim any responsibility for the flooding, had until then been used

³⁸ Basu (2015a). Interestingly, the petitioner focused not on Dhari Devi's 'right' as a legal person but on the devotees' right to worship the deity in her original place.

³⁹ Gusain (2013). Another paper reports for example on how, according to local media, as soon as the statue was moved by the company, 'within hours, cloudbursts had happened upstream and the Alaknanda river came surging down.' (Sruthijith KK 2013).

⁴⁰ Basu (2015b).

⁴¹ Gusain (2013).

⁴² See for instance the video posted by TV9 Gujarati (<https://www.dailymotion.com/video/x11baiu>).

⁴³ *Srinagar Bandh Apda Sangharsh Samiti* 2016.

by Dhari Devi's devotees in the sense of divine punishment should the statue be moved. After the flooding, it was the lawyer who defended the victims who rejected the notion of an act of god, saying that the company could not 'seek shelter' under this idea to avoid paying compensation'.⁴⁴

The argument of an act of god was eventually dismissed by the National Green Tribunal which ordered the company to pay compensation. In fact, the tribunal stated that even if it was an 'act of god', the company was still liable.

Even after the judgment, the media continued to play on this dual use of the term 'act of god', as suggested in a photograph announcing the National Green Tribunal's decision: a collage showing a victim crying in the foreground and, in the background, a giant statue of god Shiva surrounded by flooding.⁴⁵

Uttarakhand 2013: Landmark NGT order makes a strong case against building dams

NIHAR GOKHALE

@nihargokhale | First published: 25 August 2016, 20:43 IST



Collage linking God (Shiva) and flood (in Gokhale 2017)

The case illustrates the different notions of responsibility that the legal and ritual context brings into play. If in the legal context the idol, as a legal person, is considered to have rights and duties (like other human institutions), this legal responsibility does not apply to events which imply the notion of the deity's 'intention' or 'will'—such as the idea that the flood has been sent by the deity.

⁴⁴ Ibid., p 16.

⁴⁵ Gokhale (2017).

Despite the possible religious twist that the legal term ‘act of God’, which is used by the company, could have in a religious context where floods are often interpreted in terms of divine punishment, the two perspectives—legal and religious—were kept clearly separate in this case. In the next case, by contrast, we will see an overlapping between a religious and a legal perspective. Interestingly, however, such overlap was proposed not by the local plaintiff, who had filed a case with no religious implications, but by the judge himself in his ruling.

River–goddesses as legal persons

One final example that I will examine here is related to the recent international debate on whether natural resources should be considered legal entities. This idea was first used in the USA in a now famous Supreme Court case, *Sierra Club v. Morton* (1972), aimed at blocking the construction of a ski resort. The case became famous primarily because of the dissenting opinion of Justice Douglas who, inspired by reading Christopher Stone’s now equally famous 1972 article ‘Should Trees Have Standing?—Toward Legal Rights for Natural Objects’, proposed that “environmental objects”, such as valleys, rivers, trees or lakes, should be able “to sue for their own preservation”. (Stern 2018)

The case had an impact at international level and Stone’s idea of giving nature a legal standing began to be taken as a juridical tool in environment-related cases of a very different nature and background.⁴⁶ Legislatures or courts in various parts of the world began to grant legal personhood to various natural resources (trees, rivers, mountains, glaciers), where the idea of ‘rights of nature’ is sometimes used along with local or neo-indigenist concepts of nature – a form of ‘legal animism’ (Hermitte & Chateauraynaud 2013) that is not without provoking criticism in legal circles. One example is the Constitution of Ecuador – influenced by the *buen vivir* Andean cosmology – which recognizes the fundamental rights of Pachamama, Mother Earth. In 2017, the New Zealand parliament decided to grant legal personhood to the River Whanganui, which the Maori population claimed to own – a decision which made international headlines.

The idea of recognising an element of the natural environment as a legal person largely resonates with people in India. Many rivers are considered to be deities by the Hindu population. (Eck 1982; Alley 1998, 2002) There is also an important network of pilgrimage sites around these rivers, which gather huge crowds of devotees. Rivers, however, are also being destroyed by hydro projects and by pollution, and many court cases have been filed by activists against companies or against the government. The question of environmental protection in India also needs to be placed in the context of the proactive attitude of superior courts in enforcing the so-called ‘fundamental duties’ introduced in a 1976 amendment to the Constitution.⁴⁷ One of these duties is ‘to protect and enhance the natural environment’, especially through the Public Interest Litigation procedure,⁴⁸ a procedure inspired by an American practice, which changes the *locus standi* (the right or ability to bring a legal action to a court of law) rule, allowing

⁴⁶ One example is the Constitution of Ecuador – influenced by the *buen vivir* Andean cosmology – which recognizes the fundamental rights of Pachamama, Mother Earth. In 2017, the New Zealand parliament decided to grant legal personhood to the River Te Awa Tupua which the Maori population claimed to own - with immediately resonated at international level.

⁴⁷ Article 51-A (g), says that ‘It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.’

⁴⁸ Inspired by an American practice, this provision was developed in India during the 1980s by Supreme Court judges.

individuals or associations to file a complaint not because they are personally affected but because public interest at stake. Many court cases have been filed within the framework of PILs with regard to air quality, water quality, and river pollution—which are major nationwide problems in India. This procedural innovation has, on the one hand, enabled citizens to take legal action and to oppose practices or projects that are detrimental to public interest and, on the other hand, enabled the development of judicial activism because judges can take action on their own initiative and thus become defenders and promoters of environmental or ecological values.

The case I am going to refer concerns the river Ganges and combines the action of a private citizen and judicial activism in a peculiar (and probably exceptional) way. In fact, while the issue raised in the PIL by the petitioner had nothing to do with religion, the judge placed the religious issue, particularly the equivalence between Indian rivers and Hindu goddesses, at the heart of his ruling.⁴⁹

The case, a PIL, was brought before the High Court of Uttarakhand in 2014 by a resident of the district of Dehradun, Mohammed Salim, and concerned the removal of ‘illegal constructions’ and encroachment on a stretch of a Ganga water canal.⁵⁰ The case was handled by Justice Rajiv Sharma, a judge who a few years earlier, when he was appointed in Himachal Pradesh High Court, had passed a mediatized but controversial judgment banning animal sacrifice in that state,⁵¹ whose appeal is still pending at the Supreme Court. The judge was criticised by those who filed the appeal for deciding the case not on legal issues but based on his personal spiritual view of Hinduism.⁵²

In March 2017 the same judge, who had now been appointed to Uttarakhand, delivered a judgment in favour of Salim, not only ordering the removal of the encroachment but going well beyond the specific question raised by the petitioner by also proposing a series of measures to tackle river pollution, such as initiating the setting up of a Ganga Management Board.⁵³ More importantly, given the point I wish to make here, the judge combined environmental concerns—that is the idea that the rivers Ganges and the Yamuna were ‘losing their very existence’⁵⁴—with a religious discourse: the fact that Ganga and Yamuna are regarded as goddesses by the Hindus:

Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep spiritual connection with Rivers Ganges & Yamuna. According to Hindu beliefs, a dip in River Ganga can wash away all the sins. The Ganga is also called “Ganga Maa” [Mother Ganges].⁵⁵ [...] Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea.⁵⁶

The rivers Ganges and Yamuna were not explicitly referred to in the ruling as ‘idols’. However, they were presented as river–goddesses worshipped by Hindus, and the discourse on

⁴⁹ For a more detailed analysis of the case see for example Brara 2017, O’Donnell 2018, Brunet 2019, Alley 2019.

⁵⁰ *Mohd. Salim*, 2016.

⁵¹ *Ramesh Sharma* 2014.

⁵² *Maheshwar Singh* 2014.

⁵³ *Mohd. Salim* 2017.

⁵⁴ *Ibid.*, para 10.

⁵⁵ *Ibid.*, para 11.

⁵⁶ *Ibid.*, para 17

their religious importance was closely combined in the ruling with the quotation of the number of legal precedents dealing with the issue of the legal status of an idol, thus creating a link between the two ideas. An equivalence seemed to be particularly suggested between these rivers and what is commonly described in religious texts as a ‘self-revealed image’, which is a ‘product of nature’.⁵⁷

After quoting passages from various precedents related to the legal personality of the idols, the judge concluded that in order ‘to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as legal persons/living persons’⁵⁸ and concludes:

while exercising the *parens patrie* [sic] jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.⁵⁹

A few days after this ruling the same judge ruled on another case again dealing with the Ganges pollution, which was brought before the court by Lalit Miglani, an activist lawyer close to the judge, explicitly requesting that the Ganges and Yamuna be declared legal persons, entitled to their own rights. The ruling was much more environment-focused and less religiously oriented.⁶⁰ Both judgments made the headlines—not only in India but throughout the world—in a matter of days. Newspapers announced the ruling with evocative headlines: ‘India’s sacred rivers now have human rights’⁶¹ or, in a BBC headline, ‘Mother Ganges becomes a legal person’.⁶² These articles are often illustrated by colourful pictures of sadhus or pilgrims bathing in the Ganges, or of the river overlaid with an image of goddess Ganga giving her benediction.

In the Indian legal milieu these rulings were met with mixed reactions. Various judges and lawyers found the court decision to be problematic. The first ruling (*Mohd. Salim* 2017), in particular, was considered to be Hindu-oriented and therefore likely to be seen as promoting a Hindu Nationalist political agenda (O’Donnell 2018; Alley 2019).

Aside from the criticism from those troubled by the religious/Hindu-centred perspective of the ruling, another major problem raised by the decision concerned the question of responsibility linked to the status of legal person. As often happens in the case of a legal person, a human representative has to be named as a legal parent to act on its behalf. The court named the Uttarakhand government, the Advocate General and the director of the Ganges project as the rivers’ ‘*persons in loco parentis*’ or legal parents who have to give a ‘human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. These Officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well-being of these rivers.’⁶³

The Uttarakhand government immediately opposed the court’s decision to grant the river Ganges ‘living status’, a move that received much less international coverage. In fact, according to the notion of *parens patriae*, the legal representative of the river would be responsible not only for ensuring the ‘health and the well-being’ of the river but also for the potential damage

⁵⁷ *Ibid.*, para 13. On this point the judgment quotes *Ram RankiJee* 1999.

⁵⁸ *Ibid.*, para 16.

⁵⁹ *Ibid.*, para 19.

⁶⁰ *Lalit Miglani*. 2017.

⁶¹ *Bhattacharya* (2017).

⁶² *Ganguly and Majumder* (2017).

⁶³ *Mohd. Salim* 2017, para 19.

the river might cause to humans and to human property. This was at least one of the arguments the State put forward in the appeal it filed at the Supreme Court: the idea that, for example, in the case of a flood or if the river is polluted, the legal parent would be held responsible for paying compensation on behalf of the river. In fact, the advocate general wondered during the appeal what would happen in the case of flooding ‘vis-à-vis someone dying in these rivers due to such flood’: would the state be asked to pay compensation to the victims? Could the victims file suit for damages against the Chief Secretary of the State? And would the state government be considered ‘liable to bear such financial burden’?⁶⁴ The state filed an appeal asking the Supreme Court to overturn the High Court ruling—and the case was put ‘on stay’. Paradoxically, it was a BJP government, headed by a party that had always placed Hindu ideas at the centre of its political campaign, who now opposed the decision to grant legal status to the Ganges and the Yamuna, and to recognise them as legal persons.

Apart from the eventual outcome of the case, it is interesting to compare it with the Dhari Devi case previously mentioned. In fact, although Dhari Devi was already considered a legal person, with rights and responsibilities, her ‘role’ in the flood was not at all taken into account in court even though those who were opposed to the project said quite the opposite out of court. In the Ganges and Yamuna case, by contrast, the idea of recognising the rivers as legal persons led those named as their legal parents to become worried about the practical consequences this move might entail. In other words, while the idea of declaring a god/idol responsible for flooding would not be admissible in court, the ‘responsibility’ of the river itself (or the fact that the river ‘caused’ the flood) would be much easier to prove—and would therefore compel the state to pay compensation.

Conclusion

In this contribution my aim has been to look at how the idea of the ‘presence’ of a deity in a particular place takes form in the context of litigation in India. As we have seen, the fact that courts in India are called upon to rule on cases involving (or filed by) a deity has been the direct consequence of the British need to legally handle the longstanding Indian practice of donating material property to a specific deity-image.

While in a ritual context the reasons for and the consequences of these donations usually imply the idea of the deity’s existence in a specific area—and, for instance, of its control over a flood—the idea of a deity’s ‘intent’ or ‘agency’ is not taken into consideration by the court. In the examples mentioned above the judges insisted that, though Hindu idols are recognised as legal persons, this must not be taken literally, as if the deity were a real individual, but as a legal fiction. Unlike in a ritual setting where the deity’s image (whether fixed like a statue or mobile like a palanquin) is supposed to be ‘animated’ by the presence of the deity, in a legal setting the deity’s presence in the idol, and even less so its agency, is not taken into account. Although a legal person with rights and duties, the idol is inert and passive before the law.

However, though the court does not take into account the intention of the deity it takes into account the intention of the donor, of the one who donates material property to the deity. And indeed the courts applied this principle to different cases which addressed a variety of issues. First of all, the need to define what an ‘idol’ is and what its status as a legal person could imply, often leads the judges to turn to Hindu scriptures—for example, as we have seen, to establish to what extent the idea of consecration or public cult is essential in this definition. If this scripture-oriented attitude is in keeping with an established practice in British and consequently

⁶⁴ *State of Uttarakhand* 2017, p. iii.

Indian courts (Fuller 1988.), most judges also insist on bearing in mind the distinction between a religious and a legal reasoning while ruling on a case that involves a deity–image.

Secondly, even if the decision to recognise a Hindu idol as a legal person is linked historically to the British practice of land settlements, the types of issues involving an idol that courts have started to handle goes well beyond the question of the idol's legal personality or its material property. As we have seen in the Jaina or in the Ayappa case, though many issues brought before the court pertain to the question of property, they may also have a direct impact on ritual procedures of worship. Some of them do not even concern the idol's rights as a legal person but rather the worshippers' civil or fundamental rights.

A third aspect to be considered is that, parallel to judicial litigation, the case continues to be handled at a local level by ritual or political instances where it may sometimes follow a very different path. This particularly emerged in the Dhari Devi case and shows not only how the idea of the idol as a legal person needs to be viewed, as judges insist, as a legal fiction, but also how the question of responsibility (implied in the notion of 'duties') does not seem to have the same implications compared to other legal persons, for example, corporations. In fact, despite Dhari Devi being a legal person (with rights and duties), the widespread idea in the region that the flood could have been provoked by the goddess was not used in court, whereas the company's responsibility was acknowledged.

In the last example presented here, the Ganges case, the idea of a connection between a religious and a legal logic was made not by local actors but by the judge himself. By overlapping religious references to the Ganges as a goddess—which were completely absent in the petitioner's claims—and legal precedents concerning Hindu idols, the judge clearly suggested in his first ruling that both the Ganges and the Yamuna should be recognised as legal persons because they were similar to 'idols' (without stating it explicitly). The fact, however, that the Ganges and the Yamuna are not idols but rivers immediately prompted those who had been designated as their legal parents to reject the idea of being considered responsible (on behalf of the rivers) in the event of flooding.

The comparison between the two cases shows that, although neither the idol nor the river is considered to be an intentional actor by the court, the idol is regarded as inert, inanimate, whereas the river is considered to be 'animated', that is 'active', in the sense that it is easy to prove that its flow can provoke flooding. Therefore, while the legal parent of a Hindu idol (such as the temple administrator) is not worried about being forced to compensate the victims of a flood sent by the deity, the legal parent of a river (here the state of Uttarakhand) clearly wants to prevent that from happening.

The ruling (put 'on stay' by the Supreme Court) shows how while judges, in handling these issues, deal with the legal status of a god and not with its ontological existence, in some cases—and under the pen of some judges—these two modalities of the 'presence' of a deity can be confused or intertwined.

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